in violation of ordinance, the street railway was liable for negligence of such motorman in failing to stop his car when he saw or should have seen that a standing truck would throw plaintiff from the running board.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 841.]

3. Carriers (§ 318 (4)*)—Evidence Held to Show that Motorman Should Have Seen that Truck Would Strike Passenger on Running Board.—In an action for personal injuries by passenger brushed from running board, where he was riding contrary to ordinance, by a standing truck, evidence held to show that the motorman saw or ought to have seen the truck in ample time to stop his car.

4. Carriers (§ 280 (1)*)—Passengers Entitled to Highest Degree of Care.—A carrier owes a passenger the highest degree of care to see that he is not injured.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 849.]

5. Appeal and Error (§ 1068 (1)*)—Error in Instructions Immaterial Where Disputed Facts Were Settled as Asked by Appellant.—Errors in instructions are not material and need not be discussed on appeal, where the questions of fact about which there could be any dispute were settled by the jury upon instructions exactly as asked by the complaining party; the other party having asked for no instructions.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 600, 601.]

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 62.]

Error to Circuit Court of City of Norfolk.

Action by John B. Cherry against the Virginia Railway & Power Company. Judgment for plaintiff, and defendant brings error. Affirmed.

E. R. Williams and *J. T. Moore,* both of Richmond, and *W H. Venable,* of Norfolk, for plaintiff in error.

E. R. F. Wells, of Norfolk, for defendant in error.

E. I. DUPONT DE NEMOURS & CO. *v.* BROWN.

Jan. 20, 1921.

[105 S. E. 660.]

1. Master and Servant (§ 295 (7)*)—Instruction on Assumption of Risk Held Unobjectionable.—Instruction that, if the jury believed that a person with ordinary prudence whose mental and physical powers and opportunities for observing the conditions were the same as those of plaintiff would have realized the risks and dangers of

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

working around the place, then plaintiff himself is chargeable with knowledge of the conditions, as amended, held unobjectionable.

2. Master and Servant (§ 293 (7)*)—Instruction on Safe Place to Work Held Not Misleading.—Instruction for plaintiff that the care and diligence required of the master to provide a reasonably safe place to work is such as a reasonably prudent man would exercise under like circumstances, etc., held not misleading with reference to the duty involved, despite defendant's effort to distinguish between a particular place at which the accident occurred and a permanent place to work in a factory or shop.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 727.]

3. Master and Servant (§§ 101, 102 (8)*)—Place Should Be Reasonably Safe.—It was the duty of an employing company to keep a place within its plant reasonably safe for employees while working there in obedience to proper orders.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 669.]

4. Master and Servant (§ 296 (14)*)—Instruction on Obeying Orders Not Erroneous.—In a servant's action for injuries, instruction that a servant is excusable for obeying orders in and about his master's business when given by the master or one in authority, unless the danger to be incurred from obedience is so plain and manifest that no prudent person would attempt obedience, held not misleading, confusing, and without support in the evidence as assuming that the foremen of two gangs of laborers were vice principals.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 709.]

5. Master and Servant (§ 281 (1)*)—Evidence Held Not to Show Contributory Negligence in Working around Refuse Liquid Acid.—In an action by a powder mill employee for injuries by having his feet and legs burned by refuse liquid acid in the niter cake dump or salt cake bed, evidence on the issue of contributory negligence held sufficient to sustain verdict for plaintiff.

6. Appeal and Error (§ 1170 (1)*)—Supreme Court Can Reverse Only if Judgment Plainly Wrong or Unsupported.—Under Code 1919, § 6363, the Supreme Court of Appeals can reverse the judgment of the trial court only if it appears that it is plainly wrong or without evidence to support it.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 581.]

Error to Circuit Court, Prince George County.

Action by A. L. Brown against E. I. Dupont de Nemours & Co. To review judgment for plaintiff, defendant brings error. Affirmed.

Plummer & Bohannon and *Bernard Mann,* all of Petersburg, for plaintiff in error.

R. H. Mann, of Petersburg, for defendant in error.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.